

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL WIGGS,

APPELLANT.

APPELLATE CASE NO. 2019-001849

INITIAL REPLY BRIEF OF APPELLANT

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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II.

The recorded statement Appellant gave after Investigator Fraser’s misrepresentation of law was unfairly prejudicial despite the fact that Appellant did not explicitly admit to raping the complaining minor witness because Appellant admitted that sexual contact occurred between he and the minor and Appellant admitted he momentarily entertained the idea of having sex with the minor before refusing her advances.3

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ARGUMENTS IN REPLY

I. Appellant voluntarily driving to the police station prior to giving the recorded statement and Investigator Fraser's nonforceful demeanor during the recorded interview were of no consequence in the determination regarding the involuntariness of Appellant's recorded statement.

Appellant's will was overborne when Investigator Fraser misrepresented the law to him and induced the involuntary, inculpatory statement. See Baptiste v. State, 179 So. 3d 502, 506 – 07 (Fla. 2015) (A misrepresentation of law is much more likely to render a confession involuntary compared to a misrepresentation of facts); State v. Arrington, 470 N.E.2d 211, 217 (Oh. Ct. App. 1984) (Officers' statements constituted “direct or indirect promises” of leniency or benefit; however, their other statements regarding the possibility of probation “*were misstatements of the law*” such that the defendant's statement incriminating statements, not being freely self-determined, were improperly induced, were involuntary and were inadmissible as a matter of law.)(emphasis added); State v. Masumoto, 452 P.3d 310, 316 (Hi. 2019) (“deliberate falsehoods extrinsic to the facts of the alleged offense, which are of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt, will be regarded as coercive per se”).

Respondent's argument that Appellant voluntarily driving to the police station to speak with Fraser was inconsequential regarding the determination of whether Fraser's misrepresentation of law overborne Appellant's will. Moreover, Fraser telling Appellant he was not under arrest and free to go home during the interview was also of no consequence because Appellant's argument on appeal was not that Fraser acted so intimidating and forceful that he made the inculpatory statement out of fear. Rather Appellant argued that Fraser's

misrepresentation of law that Appellant would not be guilty of a crime if the minor consented to having sex with him induced Appellant into making the inculpatory statement. In that context, Fraser's promise that Appellant was free to return home after the interview likely exacerbated the prejudicial effect of the misrepresentation because Fraser promised Appellant he was free to return home in an attempt to endear himself with Appellant so that Appellant would be more likely to believe Fraser's misrepresentation of the law and give an involuntary statement.

II. The recorded statement Appellant gave after Investigator Fraser's misrepresentation of law was unfairly prejudicial despite the fact that Appellant did not explicitly admit to raping the complaining minor witness because Appellant admitted that sexual contact occurred between he and the minor and Appellant admitted he momentarily entertained the idea of having sex with the minor before refusing her advances.

While Appellant did not specifically admit in the recorded statement to raping the complaining minor witness, he stated that the minor initiated sexual contact with him by rubbing her "booty" on him and that he was tempted to engage in sexual activity with her when that occurred. That statement was extremely prejudicial because it showed the jury that some type of sexual contact happened between Appellant and the complaining witness, and Appellant at least entertained the idea of having sex with the complaining witness before refusing. Thus, the involuntary statement made it seem more likely that Appellant committed the crime alleged and; accordingly, was incredibly damaging to Appellant's defense that he never had sex with the minor witness.

If Appellant's recorded statement was not unfairly prejudicial, as Respondent argued in the initial brief of respondent, the state would not have admitted it into evidence at Appellant's trial. It was due to the prejudicial nature of the recorded statement that defense counsel sought to suppress it and that the state sought to admit it into evidence over defense counsel's objection.

As discussed in the initial brief of appellant, prior to Fraser's misrepresentation of law during the interview, Appellant made a written statement where he denied all culpability. R. 307. Appellant only made the inculpatory statement directly after officer Fraser told him there was a "huge difference" between having consensual sex versus forcible sex with his minor niece implying to Appellant if his minor niece consented to sexual contact, he would not be guilty of a

crime. After hearing Fraser's misrepresentation of law, an innocent person would have reasonably "confessed" to what they believed was lawful behavior in order to end the matter. Accordingly, Appellant's statement in this case was involuntarily made because it was so connected to Fraser's misrepresentation of law it could not be relied upon as voluntarily given. State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1986); citing State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977).

CONCLUSION

For these additional foregoing reasons, Appellant respectfully requests that this Court vacate his conviction and remand his case for a new trial.

s/Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of January, 2021.

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Scott Matthews, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Michael Wiggs, #380545, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 15th day of January, 2021.

s/Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT